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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER MARINO,
Plaintiff,
v.
YUMMYEARTH, INC.,
Defendant.

Case No: 3:22-cv-02739-VC

**DEFENDANT YUMMYEARTH, INC.'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ITS MOTION TO DISMISS**

Date: September 8, 2022
Time: 2:30 p.m.
Judge: Hon. Vince Chhabria
Court Rm.: 4

Compl. Filed: May 8, 2022

1 Defendant YummyEarth, Inc. (“YumEarth”) hereby requests that the Court take judicial
2 notice of the documents identified below in support of its Motion to Dismiss.

3 Pursuant to Federal Rule of Evidence 201, a district court may take judicial notice of
4 matters “not subject to reasonable dispute” because they “can be accurately and readily determined
5 from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). “In the
6 context of food labels, courts regularly take judicial notice of product labels when those product
7 labels form the basis of the relevant causes of action.” *Hawyuan Yu v. Dr Pepper Snapple Grp.,*
8 *Inc.*, No. 18-CV-06664-BLF, 2020 WL 5910071, at *3 (N.D. Cal. Oct. 6, 2020) (citing *Barnes v.*
9 *Campbell Soup Co.*, 2013 WL 5530017, at *3 (N.D. Cal. July 25, 2013)); *see also Silver v. BA*
10 *Sports Nutrition, LLC*, No. 20-CV-00633-SI, 2020 WL 2992873, at *2 n.4 (N.D. Cal. June 4, 2020)
11 (citing *Jones v. ConAgra Foods, Inc.*, 912 F. Supp. 2d 889, 903 n.7 (N.D. Cal. 2012)) (a product
12 label is “properly judicially noticeable” if it “is referenced in the complaint”); *Bronson v. Johnson*
13 *& Johnson, Inc.*, No. 12-CV-04184 CRB, 2013 WL 1629191, at *1 n.1 (N.D. Cal. Apr. 16, 2013)
14 (taking judicial notice of product labels incorporated by reference in the plaintiffs’ complaint);
15 *Eidmann v. Walgreen Co.*, 522 F. Supp. 3d 634, 642 (N.D. Cal. 2021), *appeal dismissed*, No. 21-
16 15659, 2021 WL 4785889 (9th Cir. May 17, 2021) (taking judicial notice of product labels where
17 plaintiff made “numerous references” to the labels in the operative complaint).

18 Plaintiff alleges that she purchased YumEarth’s Organic Fruit Snacks “at a price of
19 approximately \$3.99 per bag from a Walgreens store located in San Francisco, CA.” (Compl. ¶
20 17(e).) The label for YumEarth’s Organic Fruit Snacks forms the basis for Plaintiff’s false
21 advertising claims. The Complaint attaches several images of YumEarth’s Organic Fruit Snacks.
22 (Compl. ¶¶ 25(a), 34, 46.)

23 Accordingly, YumEarth requests that the Court take judicial notice of the following product
24 label attached hereto:

25 **Exhibit 1:** Images of the front and back of the label for YumEarth’s Organic Fruit Snacks.

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1 Dated: July 22, 2022

Respectfully submitted,

2 BRAUNHAGEY & BORDEN LLP

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4 By: /s/ Matthew Borden
Matthew Borden

5 *Attorney for Defendant YummyEarth, Inc.*
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EXHIBIT 1



YUMEARTH.COM

Since 2007, we've been making organic candy with a whole lotta love and simple ingredients you can pronounce. We offer a tasty variety of organic and allergy-friendly candy that is so delicious you will love to share (or keep all to yourself). What's not to love?

Nutrition Facts

5 servings per container
Serving size 1 snack pack (19.8g)

Amount per serving
Calories 70

	% Daily Value*
Total Fat 0g	0%
Saturated Fat 0g	0%
Trans Fat 0g	
Cholesterol 0mg	0%
Sodium 20mg	1%
Total Carbohydrate 16g	6%
Dietary Fiber 0g	0%
Total Sugars 12g	
Includes 12g Added Sugars	24%
Protein 0g	
Vitamin D 0mcg	0%
Calcium 0mg	0%
Iron 0mg	0%
Potassium 0mg	0%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

INGREDIENTS: ORGANIC RICE SYRUP, ORGANIC CANE SUGAR, PECTIN, CITRIC ACID, ASCORBIC ACID, NATURAL FLAVORS, COLORED WITH ORGANIC CONCENTRATE (APPLE, CARROT, PUMPKIN, BLACKCURRANT), ORGANIC SUNFLOWER OIL, ORGANIC CARNAUBA WAX.

Distributed by YummyEarth Inc. Stamford, CT 06902
Certified Organic by Ecocert France SAS
Product of France



62108

organic fruit snacks

*EVEN MORE REASONS TO LOVE THEM:

- VEGAN
- GLUTEN FREE
- ORGANIC & NON-GMO
- COLORED WITH REAL FRUIT & VEGETABLE JUICES
- MANUFACTURED & PACKAGED IN A PEANUT FREE FACILITY
- MADE WITHOUT:

- ✗ SOY
- ✗ EGG
- ✗ DAIRY
- ✗ FISH
- ✗ SHELLFISH
- ✗ PEANUTS OR TREE NUTS
- ✗ ARTIFICIAL DYES
- ✗ HIGH FRUCTOSE CORN SYRUP

VISIT YUMEARTH.COM/FAQS FOR COMPLETE PACKAGING AND MANUFACTURING INFO.



TRY OUR
OTHER
SWEET TREATS!



scan here
for more!

This packaging material has been manufactured in a factory designed and built to LEED sustainable building guidelines on equipment powered by 100% wind-generated electrical energy.